SINGAPORE REPORTS

YEO TUAN PAUL v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) March 20, 1974]
[Singapore — Magistrate's Appeal No. 10 of 1974]

Enlistment Act (Cap. 229), s. 32(a) — Failure to report for enlistment — Plea of guilty — Revision.

National service — Failure to report for enlistment — Plea of guilty.

In this case the short facts were as follows:— In 1968 the appellant having finished his schooling applied to enlist for national service but was told that he was not of the age group and was rejected. Subsequently he joined the Singapore Telephone Board and he then was required to register and he duly registered for national service on April 21, 1971. He was medically examined on April 22, 1971 and eventually received the Enlistment Notice requiring him to report on the afternoon of January 23, 1973. After an unsuccessful attempt to obtain a postponement of his enlistment because of examinations he had to take, he presented himself at the Central Manpower Base. He found himself in a room with about 200 young men waiting to enlist. His name was called and he was questioned by a lady in military uniform. She asked him some questions, then returned his identity card and according to him she said, "Go back and wait". The appellant assuming that "Go back and wait" meant go home and wait for further notification, went home. It seemed however that he had to go into a room and wait until the oath taking ceremony. The appellant was charged with failing to comply with a notice of enlistment. He pleaded guilty and was convicted and sentenced. On appeal, counsel for the appellant requested the learned Chief Justice to exercise his powers of revision under section 258 of the Criminal Procedure Code.

Held: had the real facts been brought to light, namely that the appellant in fact on the day in question duly reported for enlistment, it was clear that no court would have convicted the appellant even on his plea of guilty on the charge as it stood and therefore in exercise of the powers of revision the conviction and sentence must be set aside.

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

S. Rajendran (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): I suppose this appeal has served one, I think, very useful purpose in that it shows the importance for both the prosecution as well as the accused person in a criminal charge to exercise extreme care and diligence in placing before the court the full facts which may be relevant both to the charge as well as to the sentence. In this particular case the accused, who had decided to plead guilty to the charge under section 32(a) of the Enlistment Act which is a charge for failing to report for enlistment, when the facts were outlined to the court in terms of the complaint that on the day as specified in the enlistment notice he had not turned up at the appropriate place to report for enlistment, admitted to that vital fact. Unfortunately, prosecuting counsel subsequently went on to stress to the court that the appellant had failed to report and then drew the attention of the court to the many problems that arose out of such failure and asked that this case be treated as a serious case. Had the real facts been brought to light, namely that he in fact on the day in question duly reported for enlistment, it is clear that no court would have convicted the appellant even on his guilty plea on the charge as it stood.

Ever since national service was introduced in Singapore and this has been many years ago, it has been made, I think, absolutely clear to everyone concerned that any evasion on the part of anyone who is liable to render national service, is a serious offence — clear because the Legislature has specified a heavy maximum punishment for it. The duty of the court is to administer the law having regard to what I have just said and to the facts of the particular case. The extent of the punishment must depend on the facts of the particular case.

Now, in this case the appellant has brought the present months of uncertainty on himself but on the facts as they are now before me, in exercise of my powers of revision I set aside the conviction and sentence.

Conviction and sentence set aside.

ANDREW CHOU HOCK GUAN & ORS. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Winslow and Kulasekeram JJ.) March 29, 1974]
[Singapore — Criminal Appeal No. 14 of 1972]

Criminal Law and Procedure — Trial — Joint trial on charges of being members of unlawful assembly whose common object was to cause death — Evidence of accomplice — No corroboration — Trial judges accepting uncorroborated evidence — Discretion in ordering joint or separate trials — Admissibility of cautioned statements — Criminal Procedure Code (Cap. 113), ss. 121, 149 and Schedule E.

Penal Code ss. 149 and 302 — Members of unlawful assembly — Common object — Murder — Evidence Act (Cap. 5), s. 30.

In this case the nine appellants had been convicted at a joint trial of being members of an unlawful assembly whose common object was to cause death. At the trial before two judges the principal witness was one Augustine Ang who was an accomplice and had taken an active part from the outset. There was no corroboration of his evidence, but the trial judges accepted him as a truthful witness, and although they were of opinion that his evidence was uncorroborated, after warning themselves of the danger of acting on his uncorroborated evidence, they said they had no hesitation in acting on his uncorroborated evidence. On appeal it was argued *inter alia* (1) that the trial judge's assessment of the accomplice was wholly unwarranted and wholly unsupported by the evidence given at the trial; (2) the trial judges ought not to have convicted the appellants on the uncorroborated and wholly unsatisfactory evidence of the accomplice; (3) the trial judges erred in law in refusing the applications of some of the appellants that they be tried separately from the other co-accused; (4) the trial judges erred in law and in fact in finding that the common object of the appellants was to kill the three victims; (5) the trial judges should not have admitted the cautioned statements of the 3rd and 4th appellants.

Held: (1) the court had throughout the years always recognised the advantages which a jury or a judge sitting alone, has in seeing and hearing the witnesses, and in the present case the court had not been persuaded that the trial judges were wrong or were not justified, on all the evidence before them during the trial in their assessment of Augustine Ang as a truthful witness;

(2) the judgment of the trial judges clearly indicated that they were aware of the danger of convicting without corroborative evidence of Augustine Ang's story and that they knew that there was no such evidence but nevertheless were convinced that he was speaking the truth and that his story was true when considered in the light of the rest of the evidence and the surrounding circumstances;

(3) accordingly there was no misdirection or non-direction on the part of the trial judges in accepting Augustine Ang as a truthful witness and in acting upon his evidence even though he was an accomplice whose evidence was uncorroborated;

(4) the question of whether there should be a joint or separate trials was a matter of discretion for the trial judges and the court could not interfere with the exercise of the discretion unless it was satisfied that the trial judges acted upon wrong principles and in this case so far from being so satisfied the court was of opinion that the trial judges were correct in refusing the application for separate trials;

(5) if the trial judges' assessment of Augustine Ang as a truthful witness was justified on all the evidence and the circumstances and they were convinced that his story was true and they acted upon it after warning themselves of the danger of convicting each of the appellants on his uncorroborated evidence, then the trial judges did not err in law or in fact in finding that the common object of the appellants was to kill the three victims;

(6) the cautioned statements of the 3rd appellant and the 4th appellant were rightly admitted in evidence;

(7) there was sufficient evidence in this case to warrant the conviction of each of the nine appellants on all the three charges of murder read with section 149 of the Penal Code and therefore the appeals must be dismissed.

Cases referred to:-

(1) *Chin Nang Hong* v. *Public Prosecutor* [1965] 1 M.L.J.

(2) *Grondkowski* (1946) 31 Cr. App. R. 116 at p. 120.

COURT OF CRIMINAL APPEAL.

B. T. Wigoder, Q.C. and *Francis Lee Choon Hui* for the first and second appellants.

G. Gopalan for the third appellant.

L. Fernando for the fourth appellant.

J. B. Jeyaretnam and *C. K. V. Raghavan* for the sixth, seventh and eighth appellants.

Fifth and ninth appellants in person.

Abdul Wahab Ghows (Solicitor-General) and *Loh Lin Kok* (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering judgment of the Court): The nine appellants were convicted at a joint trial by the High Court on three charges of murder and all of them except the fifth and ninth appellants, who were under the age of eighteen at the time of the commission of the offences, were sentenced to death. All of them now appeal against their convictions. The three charges read as follows:—

1st Charge — "that you, 1. Andrew Chou Hock Guan, 2. David Chou Hock Heng, 3. Peter Lim Swee Guan, 4. Alex Yau Hean Thye, 5. Ringo Lee Chiew Chwee, 6. Richard James, 7. Stephen Francis, 8. Konesekaram s/o Nagalingam, 9. Stephen Lee Hock Khoon on or about the 29th day of December, 1971 at about 12 midnight at No. 19 Chepstow Close, Singapore, were members of an unlawful assembly whose common object was to cause the death of one Ngo Cheng Poh and others, and that while you were members of the assembly one or more members thereof in the prosecution of the common object of such assembly committed murder by causing the death of the said Ngo Cheng Poh, and you have thereby by virtue of section 149 of the Penal Code (Chapter 103) committed an offence punishable under section 302 of the aforesaid Code."

2nd Charge — "that you, 1. Andrew Chou Hock Guan, 2. David Chou Hock Heng, 3. Peter Lim Swee Guan, 4. Alex Yau Hean Thye, 5. Ringo Lee Chiew Chwee, 6. Richard James, 7. Stephen Francis, 8. Konesekaram s/o Nagalingam, 9. Stephen Lee Hock Khoon on or about the 29th day of December, 1971 at about 12 midnight at No. 19 Chepstow Close, Singapore, were members of an unlawful assembly whose common object was to cause the death of one Ngo Cheng Poh and others, and that while you were members of the assembly one or more members thereof in the prosecution of the common object of such assembly committed murder by causing the death of one Leong Chin Woo, and you have thereby by virtue of section 149 of the Penal Code (Chapter 103) committed an offence punishable under section 302 of the aforesaid Code."

3rd Charge — "that you, 1. Andrew Chou Hock Guan, 2. David Chou Hock Heng, 3. Peter Lim Swee Guan, 4. Alex Yau Hean Thye, 5. Ringo Lee Chiew Chwee, 6. Richard James, 7. Stephen Francis, 8. Konesekaram s/o Nagalingam, 9. Stephen Lee Hock Khoon on or about the 29th day of December, 1971 at about 12 midnight at No. 19 Chepstow Close, Singapore, were members of an unlawful assembly whose common object was to cause the death of one Ngo Cheng Poh and others, and that while you were members of the assembly one or more members thereof in the prosecution of the common object of such assembly committed murder by causing the death of one Ang Boon Chai, and you have thereby by virtue of section 149 of the Penal Code (Chapter 103) committed an offence punishable under section 302 of the aforesaid Code."

The deceased, Ngo Cheng Poh, whose death is the subject matter of the first charge, was the mandatory of a non-resident buyer of gold from a bank and as such mandatory he had on many occasions prior to 29th December 1971 purchased gold bars, each weighing one kilo or 2.2 lbs., for export from Singapore. The gold bars were collected from the bank either by the deceased or by one or more of three persons, Leong Chin Woo whose death is the subject matter of the second charge, Ang Boon Chai, whose death is the subject matter of the third charge and a Mr. Foo. Leong Chin Woo was a trusted friend and Ang Boon Chai was an employee of Ngo Cheng Poh.

Some of the gold bars so purchased were exported, apparently illegally, from Singapore to Saigon through the first appellant, Andrew Chou Hock Guan (hereinafter referred to as "Andrew") who from June 1969 was working for Air Vietnam as ground operations supervisor. His duties in December 1971 were among other things to look after the ramp side, to check the cabin cleaning work, to inform the pilot of the cargo and passenger load and to signal to Saigon the time of departure of an Air Vietnam flight from Singapore. The method employed by Ngo Cheng Poh to export to Saigon was for the gold bars to be delivered to Andrew at his house, No. 19 Chepstow Close on the evening before an Air Vietnam flight would depart the next morning for Saigon. The gold bars were taken from Ngo Cheng Poh's house, packed five bars to a package, four packages in a canvas bag, by Ngo, sometimes accompanied by his wife, in his own car, a Mercedes Benz, and followed by Leong Chin Woo driving his own car a Volkswagen. On some occasions Ang Boon Chai would also accompany the party when gold was delivered to Andrew at his house.

On every occasion when gold was delivered in the evening to Andrew, Ngo Cheng Poh would first await a telephone call from Andrew and soon after Andrew's call Ngo Cheng Poh usually with Leong Chin Woo would then drive their respective cars with the gold to Andrew's house.

On the evening of 29th December 1971 at Ngo Cheng Poh's house 120 gold bars were wrapped by him with the help of his wife in packages of five in each package and put into six canvas bags. At about 11.25 p.m. he received a telephone call from Andrew and thereupon he with Leong Chin Woo and Ang Boon Chai, who had both gone to Ngo Cheng Poh's house earlier that evening, left in the Mercedes and Volkswagen cars taking with them the 120 gold bars which were put in the Mercedes car. Ngo Cheng Poh's wife saw them driving off from her house and then awaited the return of her husband. At 2.30 a.m. she answered a telephone call and the caller who was Andrew asked for Ngo Cheng Poh. She told Andrew that her husband had already left after receiving his earlier call at 11.30 p.m. to which he replied "No, No" which she understood as meaning that her husband had not been to Andrew's house and so she replied "No, then I do not know". After this call she waited without success for her husband to come home and eventually at about 6 a.m. she drove her own car to Andrew's house arriving there after 6 a.m. As she was walking into the house Andrew came out of the front door and, on being asked by her whether her husband had been to his place, replied that he had not. She saw Andrew's right hand was bandaged up and was told by him that he had injured it while working at the Airport. She saw in the hall two male Chinese sleeping on the floor of the hall. At about 10.35 a.m. she went to the Joo Chiat Police Station and reported that her husband had left home with Leong Chin Woo and Ang Boon Chai in two cars at 11.30 p.m. the previous evening and since then she could find no trace of his whereabouts.

At 2.40 p.m. on 30th December 1971 a police party, on information received, found the dead body of Leong Chin Woo in blukar off Jalan Lembah Bedok which is in the Changi area near the Reformative Training Centre. The hands of the deceased were tied with a piece of rope which also went round the neck. About 200 feet away, also in blukar, was found the dead body of Ngo Cheng Poh. A piece of green nylon rope was tied loosely around the neck and a piece of cloth was tied round the mouth. A piece of black insulated electrical wire was tied round the legs. Shortly thereafter the dead body of Ang Boon Chai was found in a pond about 150 feet off Jalan Tiga Ratus, which is also in the Changi area and near the Reformative Training Centre, with a piece of green nylon rope lying on top of it.

When discovered, the body of Leong Chin Woo had bruises on the right eyebrow and the lower lip and rope marks round the neck. The body of Ngo Cheng Poh had bruises over the front side of the face, on both ears and on the left side of the chest. There were also multiple bruises on the back of the body and rope marks around the neck and the testicles were swollen. The body of Ang Boon Chai had bruises on the left side of the face and rope marks around the neck.

The three dead men had therefore clearly been brutally assaulted and strangled and the cause of death as found by the pathologist was, in each case, by asphyxia from strangulation. It was the opinion of the pathologist that their deaths occurred sometime between 8.30 p.m. of 29th December and 2.30 a.m. of 30th December 1971 and that death would have ensued within one to three minutes of the application of pressure to their necks.

Apart from the above facts which were clearly established at the trial the following undisputed facts also emerged at the trial. The first appellant, Andrew and the second appellant David Chou Hock Heng (hereinafter referred to as "David") are brothers and they lived at No. 19 Chepstow Close together with their mother and other members of the family. During the period when Andrew assisted Ngo Cheng Poh in the exportation of gold to Saigon in Air Vietnam scheduled flights the gold would be taken to Andrew's house on Wednesdays, Fridays or Sundays those being the three days in the week when Air Vietnam flies direct from Saigon to Singapore and, after an overnight stop in Singapore, flies from Singapore the next morning direct to Saigon. On these occasions Andrew would transport the gold to be exported and load it on the Air Vietnam plane leaving the next morning and for the part he played he was paid a commission of US$5/- and Singapore $10/- for every kilo of gold so exported.

Although Andrew had on the morning of the 30th December 1971 told Mrs. Ngo Cheng Poh that her husband had not been to his house on the evening of 29th December 1971, in fact Ngo Cheng Poh, Leong Chin Woo and Ang Boon Chai did arrive there at around midnight in two cars, the Mercedes and the Volkswagen. Ngo Cheng Poh and Leong Chin Woo went into the house with the 120 gold bars while Ang Boon Chai remained outside. When they arrived all the nine appellants were in the house together with another person, Augustine Ang. Andrew and David were in what is referred to as the backyard which leads from the kitchen. From the photographic exhibits the backyard has a cement floor and a roof but is open on three sides. Augustine and the other appellants were in the kitchen.

At about 12.30 a.m. Andrew was seen by a next door neighbour, Shirley Lim Yew Neo, to enter and drive a Volkswagen car from a place where it was blocking the entrance to her house, park it to the side of his house and then hastily enter the house. Shirley Lim also noticed a white Mercedes car parked just outside the gate of Andrew's house. As she was about to enter her house through the rear door David called out to her "good evening" and she noticed he was with five or six male persons standing in a circle at the side of the house near the kitchen.

Later that evening the bodies of Ngo Cheng Poh, Leong Chin Woo and Ang Boon Chai were bundled into the Volkswagen car which was then driven away by the 4th appellant, Alex Yau Hean Thye followed by a Cortina car which was driven by the third appellant, Peter Lim Swee Guan and in which were the fifth, sixth, seventh, eighth and ninth appellants. The two cars were driven to Changi and at some place in Changi the three bodies were dumped fairly near to

each other. After that the Volkswagen car was abandoned at the Tanah Merah car park and the whole party drove away in the Cortina car.

Meanwhile, 115 of the 120 gold bars which Ngo Cheng Poh had brought with him were taken by Augustine and David (although David at the trial disputed that he accompanied Augustine) in Andrew's car to No. 4A Worcester Road, the flat of the third appellant's aunt, Mrs. Tay, and handed over to Mrs. Tay. The next morning Augustine and the third appellant went to Mrs. Tay's flat, took 10 of the gold bars and sold them to a goldsmith for $39,400. Payment was made with $29,400 in cash and an I.O.U. note for $10,000. They then returned to the flat and handed over all the cash and the I.O.U. note to Mrs. Tay but that same evening they took from Mrs. Tay $10.000 cash and this money was handed over to the third appellant.

At about 10.30 p.m. on 30th December 1971 i.e. less than 24 hours after the three deceased persons had arrived at Andrew's house, a police party interviewed David and Andrew at their home. Andrew told the police that although he was expecting Ngo Cheng Poh the previous night at his home Ngo Cheng Poh did not turn up and he did not know where Ngo Cheng Poh was. One of the members of the police party noticed that Andrew's right hand was swollen and David had scratch marks on his body. When questioned about his swollen hand Andrew said that he had been sparring with his brother David. On 31st December Andrew was examined by a doctor who found that he had a bruised swollen and tender right hand and a fracture of the neck of the right fifth metacarpal which could have been caused by the hand hitting with severe force a blunt object or by a fall or by being hit by a blunt object. David was also examined on the same day by the same doctor who found that he had two recent bruises on the front of the left shoulder and the back of the right shoulder blade.

At 1.10 a.m. on 31st December the police found Ngo Cheng Poh's Mercedes car abandoned at Jalan Somapah Timor and at 6.35 a.m. the same day the police found Leong Chin Woo's Volkswagen car abandoned at Nicoll Drive and in it there were human bloodstains. On 2nd January 1972 the third appellant took a police party to No. 4A Worcester Road, the flat of his aunt, Mrs. Tay and pointed to a tin on the ledge of the flat in which were found 15 gold bars and led the police party to the ceiling of the flat where 90 gold bars were found. Mrs. Tay also handed to the police a pillow in which were found $29,000. At 1 p.m. the same day David took the police to his place of employment and opened with a key a drawer of his office desk in which were found 5 gold bars.

On 3rd January Stephen Lee Hock Khoon, the ninth appellant, who had earlier been arrested, brought the police to his house where he handed over $1,750 and on the same day the third appellant brought the police to his house and handed over $1,800. On 6th January, Ringo Lee Chiew Chwee, the fifth appellant, Richard James, the sixth appellant, Stephen Francis, the seventh appellant and Konesekaram, the eighth appellant were arrested.

The facts we have outlined above are in our opinion amply sufficient to warrant the conviction of all the nine appellants on all the three charges of murder if the other evidence led by the prosecution established first, that all of them at the time when the three victims were in Andrew's house were members of an unlawful assembly whose common object was to cause the death of Ngo Cheng Poh and the other persons accompanying him to Andrew's house on 29th December 1971 and secondly, that whilst they were members of the assembly one or more members thereof in the prosecution of the common object of such assembly committed murder by causing the death of Ngo Cheng Poh, Leong Chin Woo and Ang Boon Chai. The prosecution relied principally on the evidence of Augustine Ang to prove that common object and that the deaths of the three victims were caused by one or more of the appellants in the prosecution of the common object. He was an accomplice who on his own admission took an active part from the very outset and took part in assaulting two of the victims in Andrew's house. He was arrested on January 2nd and a few days later made a statement to the police after the police had charged him with the three murders. After the prosecution had decided to use him as a prosecution witness they withdrew the murder charges against him which were pending in a Magistrate's court and he was discharged, the discharge not amounting to an acquittal, it being the law that a Magistrate's court had no power to grant an acquittal in such circumstances.

Augustine gave evidence at the trial that in November 1971 Andrew, David, the third appellant and he planned to attack, rob and kill the person or persons who would be bringing gold bars to Andrew's house for export to Saigon by an Air Vietnam plane, with the aid of others to be recruited by the third appellant. Pursuant to that plan, on the afternoon of 20th November 1971, the third appellant brought five persons, among them the fourth and ninth appellants, to Andrew's house where he briefed them on what they should do. Later in the evening he went with Andrew, David, the third, fourth and ninth appellants and three other youths and three girls in three cars to a coffee stall at Changi from Andrew's house where David briefed them in similar terms to his own earlier briefing to the effect that 2 or 3 persons with whom his brother had business trouble would be coming to his house and must be brought down, cleanly, and quietly and their bodies then buried. For this they, the recruits, would be paid $20,000. They were also told to stand by on Wednesdays, Fridays and Sundays from 7 p.m. onwards.

A few days later because three of the five recruits dropped out of the scheme, he and the third appellant were told by Andrew and David to recruit others to replace them. The fifth, sixth, seventh and eighth appellants were recruited by the third appellant and were briefed to kill two or three men who would be coming to Andrew's house and to get rid of their bodies for $20,000. Subsequently, he with Andrew, the third, fourth, sixth, eighth and ninth appellants went to Changi near the Reformative Training Centre to look at a possible "burial" site. On the afternoon of 29th December he was told by Andrew to get the boys ready through the third appellant as the gold bars were to be delivered that night.

Eventually he, the third, fourth, fifth, sixth, seventh, eighth and ninth appellants arrived at Andrew's house that evening in two cars, one of which was a hired Cortina. Andrew and David were at home and they were shown by Andrew some nylon ropes, a roll of plaster and a towel and instructed by Andrew to remain in the kitchen to await the expected visitors. He was told to be near the kitchen door and to go out to the backyard when called. Around midnight when the sound of a motor car was heard all of them went into the kitchen except Andrew and David who remained in the backyard. A short while later he heard Andrew calling his name and he went into the backyard where he saw Ngo Cheng Poh and Leong Chin Woo and where, when he was about to assist in counting the gold bars, he saw Andrew and David pounce simultaneously on the two visitors. Andrew applied an arm-lock on Ngo's neck and David did the same on Leong's neck. He then shouted to the boys waiting in the kitchen to come out and then he joined in the assault by holding Ngo's legs while Andrew still had his hands around Ngo's neck. While he was holding Ngo's legs he saw David pulling a rope round Leong's neck and thereafter helping Andrew by putting his hands over Ngo's neck.

A short while later he walked to a path at the side of the house running from the front to the back of the house past the porch and he saw Andrew stamping his feet on the body of a man and applying karate chops on the man's neck. He picked up a small block of wood and hit the man several times and he heard the man begging not to be hit. Then he heard the sound of a car coming from the front of the house and heard David calling to Andrew that the neighbours were back. The man in the path was taken into the backyard and there he saw three bodies covered with cloth. He heard David "wishing" the neighbours as they were entering their own house which was next to the path and separated from Andrew's house by a fence.

After that he saw a Volkswagen car parked near the back gate with the fourth appellant standing behind it and he went out and stood beside the fourth appellant. He saw three inert bodies piled inside the car and at David's request he assisted in closing a door of the car. Then David covered the bodies with a piece of cloth and after that the fourth appellant went into the car and the third, fifth, sixth, seventh, eighth and ninth appellants went into the Cortina car and then both cars were driven away.

Then Andrew, David and he washed the floor of the backyard as there was blood on it and after this all three of them went in two cars, a Mercedes and a Datsun which belongs to Andrew, to Changi where the Mercedes car was abandoned in a kampong area before returning to Andrew's house in the Datsun. On returning, at Andrew's request, he telephoned Mrs. Tay to tell her to expect them and then David and he took 115 gold bars to her flat and left the gold bars there and then they returned to Andrew's house where he remained for the rest of the night.

If Augustine's evidence were true, it would establish that around midnight on the evening of the 29th December 1971 at Andrew's house all the nine appellants and Augustine were members of an unlawful assembly whose common object was to kill the person or persons who were expected to arrive at Andrew's house soon, that three persons in fact arrived as expected, that these three persons were brutally assaulted, strangled and died minutes after strangulation and that these three victims were the dead persons named in the three charges of murder. Augustine's evidence, if true, would also establish that at the time when the murders were committed all the appellants remained members of that unlawful assembly with that common object and that in prosecution of that common object some of the members of that unlawful assembly committed murder by causing the deaths of Ngo Cheng Poh, Leong Chin Woo and Ang Boon Chai.

The trial judges accepted Augustine Ang as a truthful witness and, although they were of the opinion that his evidence was not corroborated, after warning themselves of the danger of acting on his uncorroborated evidence, said they had no hesitation in acting on his uncorroborated evidence. At the close of all the evidence, the trial judges said they remained convinced that Augustine was speaking the truth and they found that on the night in question when the nine appellants and Augustine assembled at Andrew's house, they were all members of an unlawful assembly whose common object was to cause the deaths of the three victims and that whilst all of them were members of that unlawful assembly some members thereof in the prosecution of the common object of the unlawful assembly committed murder by causing the deaths of Ngo Cheng Poh, Leong Chin Woo and Ang Boon Chai. The trial judges accordingly convicted all the nine appellants.

Two of the nine appellants were unrepresented at the hearing of the appeals before this court. They were below the statutory age and were sentenced to be detained at the pleasure of the President. The other seven appellants on each of whom the mandatory death sentence was imposed were represented by four counsel. It will be convenient to deal first with a ground of appeal thoroughly canvassed before us and which is common and applicable to all the appellants. This common ground of appeal is that the trial judges' assessment of Augustine Ang, an accomplice, was wholly unwarranted and wholly unsupported by the evidence given at the trial. The trial judges' assessment appears in the following passage of their grounds of judgment:—

> "The only witness whose evidence implicated all the accused was Augustine Ang, who was a self-confessed murderer and was undoubtedly an accomplice. We looked to see if there was corroborative evidence which confirmed in some material particular not only the evidence of Augustine Ang that the crime or crimes were in fact committed but also his evidence that each of the accused committed the three offences charged. There was clearly no corroboration of Augustine Ang's evidence. We, therefore, warned ourselves of the danger of acting on the uncorroborated evidence of Augustine Ang.
>
> Augustine Ang was in the witness box for nine days out of which seven were spent in his cross-examination. The cross-examination was not only long but also severe and very thorough as he was repeatedly questioned by five different counsel on all the essential facts of the prosecution's case. His answers were consistent throughout. Furthermore we observed his demeanour very closely while he was giving evidence in the witness box. It did not appear from his manner and conduct that he was inclined either to shuffle, to prevaricate, or to speak that which was false. He appeared

to us to have all the marks of sincere contrition and we were well satisfied that, however iniquitous or obnoxious his former conduct had been, he was determined to speak the truth to the court. We also studied his evidence in the light of the other evidence adduced by the prosecution and he struck us as a truthful witness notwithstanding the role he played in the whole affair. We had no hesitation in acting upon his evidence."

Our attention was drawn to many passages in the transcript of Augustine Ang's evidence where, when cross-examined, he admitted his earlier testimony was a mistake or changed his story as regards a particular incident or where his evidence is contradictory to that of a police officer. It is submitted that those passages showed that the trial judges' assessment as quoted above was completely unjustified as those passages, though they related to minor matters clearly raised doubts as to Augustine Ang's veracity. This court has throughout the years always recognised the advantages which a jury or a judge, sitting alone, has in seeing and hearing the witnesses and in the present case we have not been persuaded that the trial judges were wrong or were not justified, on all the evidence before them during the trial in their assessment of Augustine Ang as a truthful witness.

The next criticism is that those passages at least gave rise to grave suspicion of Augustine Ang's story of the central events on the fateful night and in the light of his being an accomplice, who was fully involved from the beginning to the end in the three murders and also had the strongest possible motive in implicating all the appellants, the trial judges ought not to have convicted the appellants on the uncorroborated and unsatisfactory evidence of such an accomplice. The law on the subject of corroboration has fairly recently been considered by the Judicial Committee of the Privy Council in the case of *Chiu Nang Hong* v. *Public Prosecutor*[1] which was a case of rape where there was no corroboration of the evidence of the complainant. Lord Donovan, at page 42 said: —

"On appeal, the Court of Appeal decided that it could not interfere with the learned judge's judgment, though merely reading the notes of evidence the members of the court might feel something less than satisfaction as to the guilt of the appellant. But the learned judge had seen and heard the witnesses: he was aware of the danger of convicting without some corroborative evidence of the complainant's story, and he knew that there was no such evidence. Nevertheless he was convinced of the truth of the complainant's story, and in that position was entitled in law to convict the appellant. Their Lordships would be of the like opinion if it were correct to say that the learned judge knew that he was convicting in the absence of corroborative evidence, and bearing the risk in mind of doing so, yet felt convinced of the truth of the complainant's story."

In our opinion the same principles are applicable where the uncorroborated evidence is that of an accomplice. Applying these principles, we are of the opinion that the judgment of the trial judges clearly indicated that they were aware of the danger of convicting without corroborative evidence of Augustine Ang's story, and that they knew that there was no such evidence but nevertheless were convinced that he was speaking the truth and that his story was true when considered in the light of the rest of the evidence and the surrounding circumstances.

Accordingly, in our judgment, there was no misdirection or non-direction on the part of the trial judges in accepting Augustine Ang as a truthful witness and in acting upon his evidence even though he was an accomplice whose evidence was uncorroborated. Furthermore after a consideration of the careful arguments of all the counsel appearing before us and after a searching review of the shorthand transcript of the evidence at the trial we do not think that the verdicts of the trial judges were wrong nor do we think them in all the circumstances unsafe or unsatisfactory or unjust.

On behalf of the first and second appellants it is also contended that the trial judges erred in law in refusing their applications to be tried separately from their other seven co-accused. It is submitted that it was clear from the statements made by the other co-accused after their arrests that at a joint trial of all of them they would give evidence which must conflict with one another and thus a joint trial would be unfairly prejudicial to each of them. It is also submitted that as section 30 of the Evidence Act (Chapter 5) specifically permits a court to take into consideration a confession by a co-accused as against another accused when they are tried jointly for the same offence and as the statements of some of the other seven co-accused might be prejudicial to the first and second appellants, they would be deprived of their undoubted right to a fair trial if all the nine accused were tried at a joint trial. It is conceded that the law is that this is a matter for the discretion of the trial judges at the trial but the criticism is that there is no indication in the transcript that the trial judges exercised their discretion at all.

In our opinion this ground of appeal is also without substance. The transcript shows that the matter was argued fully on behalf of the first and second appellants and having regard to the charges as framed this court as an appellate court, in principle, ought to infer that the trial court which in this case consisted of two experienced trial judges had given due consideration to the matter although they did not think it necessary to give reasons for their decision. This being a matter of discretion it is not for this court to interfere with the exercise of the discretion unless it is satisfied that the trial judges acted upon wrong principles and so far from being satisfied we are of the opinion that they were correct in refusing the application for separate trials. For the same reasons we also reject as being without substance the same point raised by counsel on behalf of the third, sixth, seventh and eighth appellants. In this connection we respectfully adopt and emphasise the observations of Lord Goddard C.J. in *Grondkowski*[2] where he said this:

"The law is, and always has been, that this is a matter of discretion for the judge at the trial. The court so stated the law in this very case, and quite recently in *Youth*, [1945] W.N. 27, the Judicial Committee said that the question of joint or several trials had always been left to the discretion of the presiding judge. The discretion, no doubt, must be exercised judicially, that is, not capriciously. The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems, to be thought, that 'the interests of justice' means only 'the interests of the prisoners'. If once it were taken as settled that every time it appears that one prisoner as part of his defence means to attack another, a separate trial must be ordered, it is obvious there is no room for discretion and a rule of law is substituted for it. There is no case in which this has ever been laid down, and in the opinion of the court it would be most unfortunate and contrary to the true interests of justice if it were".

Another common ground of appeal is that the trial judges erred in law and in fact in finding that the common object of the appellants was to kill the three victims. If the trial judges' assessment of Augustine Ang as a truthful witness is justified in all the evidence and the circumstances and they were convinced that his story was true and acted upon it after warning themselves of the danger of convicting each of the appellants on his uncorroborated evidence then in our judgment there was no such error in law or in fact on the part of the trial judges. It mattered not, in our view, that on Augustine's evidence there were other common objects shared by all the appellants or that some of them shared some other common object or common objects such as robbery or the disposal of dead bodies or assault which were not shared by the others so long as it was proved beyond a reasonable doubt against each one of the appellants that he shared with the rest of the appellants the common object of killing the persons who were expected by them to arrive at Andrew's house on the night of the 29th December 1971.

It is also contended on behalf of the third appellant that the trial judges should not have admitted in evidence the cautioned statement made by him to a police officer after his arrest because he had made the statement under duress. The question as to its admissibility had been fully considered during "a trial within a trial" and we see no reason to doubt that the trial judges' discretion had not been judicially exercised. A somewhat similar ground was raised by the fourth appellant in his grounds of appeal the submission being that his cautioned statement was inadmissible because he had himself written the contents when the law requires the statement to be taken down in writing by the police officer to whom the statement is made. There is no substance in this point. The law governing the admissibility of such cautioned statements is contained in section 121 of the Criminal Procedure Code and Schedule E to that Code. Subsection (5) of section 121 expressly provides for the admissibility of a statement whether "it . . .is oral or in writing" and proviso (b) of section 121(5) gives the court a discretion to refuse to admit a statement made after arrest "if it appears to the court that the statement was not made and recorded substantially in compliance with the provisions of the rules set out in Schedule E to this Code".

Finally in respect of each of the nine appellants we have scrutinised with care the transcript of the evidence before the trial court having regard to the arguments urged before us by all the counsel that the conviction of each of their respective clients was unreasonable or was not supported by the evidence. We have considered these arguments bearing in mind the observations of the trial judges after a lengthy trial during which, as they said, Augustine Ang was subjected to a thorough and severe cross-examination for seven days out of the nine he spent in the witness box and bearing in mind the trial judges' assessment of Augustine Ang as a truthful witness on whose evidence they had no hesitation in acting well knowing the danger of acting on the evidence of a self-confessed accomplice to the crime of murder. We have come to the conclusion that there was sufficient evidence to warrant the conviction of each of the nine appellants on all the three charges of murder read with section 149 of the Penal Code.

Accordingly the appeals of all the nine appellants are dismissed.

Appeals dismissed.

Solicitors: *Lee & Co.; Lim & Gopalan; Ironside & de Souza; J. B. Jeyaretnam & Co.*

RE HUME INDUSTRIES (FAR EAST) LTD.; HUME INDUSTRIES (F.E.) LTD. v. HUMES LTD.

[O.C.J. (Tan Ah Tah J.) March 30, 1974]
[Singapore — Originating Summons No. 397 of 1973]

Companies — Dividend — "Profits available for dividend" — Meaning of — Shareholders — Preference shareholders — Ordinary shareholders — Share premiums whether profits — Companies Act (Cap. 185), s. 60.

This was an originating summons taken out by Hume Industries (Far East) Ltd. as plaintiff. The first defendant is Humes Ltd. which is sued personally and as representing all other persons who are now and all other persons who may hereafter be holders of ordinary stock or shares issued by the plaintiff company. The second defendant is Orbit Private Ltd. which is sued personally and as representing all other persons who are now and all other persons who may hereafter be holders of cumulative participating preference stock or shares issued by the plaintiff company.

Article 5 of the Company's Articles of Association states:

"5. The present capital of the Company is Sixty-four Million Dollars divided into Sixteen Million 5% Cumulative Participating Preference Shares of One Dollar each and Forty-eight Million Ordinary Shares of One Dollar each.

(a) The Cumulative Participating Preference Shares shall confer on the holders thereof the rights and privileges following:—

(i) The right to receive a fixed cumulative preferential dividend at the rate of Five dollars per centum per annum on the capital for the time being paid up thereon.

(ii) The right whenever the surplus profits of any year (available for dividend) remaining after payment of such fixed cumulative preferential dividend to the close of that year shall be more than sufficient to pay a dividend for that year at the rate of Five dollars per centum on the capital paid up or credited as paid up on the ordinary shares to participate in the surplus profits of the year available for dividend rateably with the holder of the ordinary shares in proportion to the capital paid up on such shares whether preference or ordinary, and;

(iii) The right in the event of the winding up of the Company to have the surplus assets applied first in paying off the capital paid up on the Cumulative Participating Preference Shares held by them respectively and secondly in paying off the arrears if any of the fixed cumulative preferential dividend aforesaid whether earned or declared or not down to the commencement of the winding up but shall not confer any further right to participate in profits or assets."

The problem of construction raised relates to the meaning of the phrase "profits available for dividend".

Held: (1) "profits available for dividend" means the profits which the directors consider should be distributed after making provision for past losses, for reserves or for other purposes;

(2) share premiums received by the company in any year cannot be regarded as being profits of that year available for dividend within the meaning of article 5(a)(ii);